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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,813	09/21/2000	Kevin R. Crompton	M0459/7018 DW	9117
7590	05/12/2005		EXAMINER	
David Wolf Wolf Greenfield & Sacks PC 600 Atlantic Ave Boston, MA 92210			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/666,813

Applicant(s)

CROMPTON, KEVIN R.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-12, 18-27, 47, 48 and 53-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-12, 18-27, 47, 48 and 53-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed February 28, 2005, has been entered. Claims 1-4, 13-17, 28-46, and 49-52 are cancelled, while claims 5-7, 9-11, 18-24, 26, 48, and 53-57 are amended.

Thus, the pending claims are 5-12, 18-27, 47, 48, and 53-57.

2. Said amendment is sufficient to withdraw the prior art rejections based upon Stark (US 3,669,818) and Halloran (US 3,916,823) set forth in section 3 of the last Office Action.

Specifically, applicant amended claims 5 and 18, which were indicated as containing allowable subject in section 5 of the last Office Action, to be in independent form. Additionally, applicant cancelled claims 1-4 and 13-17, while amending claims 6-12 and 19-25 to depend from claims 5 and 18. As such, said amendment is sufficient to overcome the rejection set forth in section 3 of the last Office Action.

3. The indication of allowable subject matter of claims 5, 18, and 47, is hereby withdrawn in view of the reference to Laird (US 6,770,240) newly cited on applicant's Information Disclosure Statement of October 14, 2004. Earlier in prosecution, the present invention was rejected over WO 00/71802 issued to Laird (Office Action of June 5, 2003). However, in the response to said action, applicant noted that the WO Laird publication was not a proper reference under 102(e). Accordingly, said rejection was withdrawn in the Office Action of January 21, 2004. Although Laird '240, published August 3, 2004, is the US equivalent of the WO Laird reference, Laird

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'240 has a valid 102(e) date of May 21, 1999, from priority to provisional application 60/135,379. Accordingly, a new rejection of based upon Laird '240 is set forth below.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 26, 48, and 53-57 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,669,818 issued to Stark in view of US 3,916,823 issued to Halloran as set forth in section 4 of the last Office Action.

Applicant has amended claim 26 to recite the visible features comprise trees or portions thereof, branches or portions thereof, bushes or portions thereof, leaves or portions thereof, flowers or portions thereof, berries, grass, rocks or portions thereof, and/or moss and to recited the fabric is a camouflage fabric. However, said amendment is insufficient to overcome said rejection of claim 26. First, the limitation of camouflage fabric is still descriptive of intended use even though it has been moved from the preamble to the body of the claim. Secondly, as noted in the last Office Action, section 4, Stark and Halloran teach the structural limitations of the claim (i.e., air-textured pile having depressions of non-uniform length and width) as well as the design features (e.g., printed flower illustration). Since the prior art meets both the structural and design features, it is argued the prior art fabric is capable of the claimed intended use as a camouflage fabric. This argument is also applicable to amended claims 48 and 53-57.

The difference between claims 26, 48, and 53-57 and claims 5-12, 18-27, and 47, which are patentably distinct over said Stark and Halloran references is the recitations to the specific

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design of the structural features in conjunction with the use of the fabric as a camouflage fabric.

In other words, said claims limit both the embossed pattern and the printed pattern to having regions of elongate shapes with longitudinal axes oriented in a first direction. Additionally, said claims limit the fabric to being a camouflage fabric. Either limitation alone is not necessarily given patentable weight, but the combination of these two limitations is found patentably distinct over the Stark and Halloran references. Alone, the recitation of the embossed and printed patterns or the recitation to “simulated bark” are merely descriptive of a design without any function. Matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. Similarly, the recitation to camouflage fabric is descriptive of intended use and cannot be relied upon to patentably distinguish the inventive fabric from prior art fabrics capable of performing said use. However, in combination, the recitation of camouflage fabric gives the design feature of elongate shapes oriented in a first direction a mechanical function, rather than just mere ornamentation. Hence, said patterns of elongate shapes are given weight and produce structural differences from the prior art fabric of Stark and Halloran capable of being used as camouflage fabrics. Since claims 26, 48, and 53-57 do not contain the combination of these two limitations, the prior art rejection stands.

6. Claims 5-12, 18-27, 47, 48, and 53-57 are rejected under 35 U.S.C. 103(a) as being obvious over Laird (US 6,770,240) in view of US 3,669,818 issued to Stark.

Laird discloses an apparatus for air embossing pile fabrics, such as flock fabrics (abstract, col. 8, lines 41-54, and col. 11, lines 1-10). The apparatus comprises air lance nozzles which are in the shape of an elongated slit (abstract), which produces 3-D texture or a pattern of

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depressions correlating to said elongated slits (col. 13, line 51-col. 14, line 16). After embossing the flock fabric, said fabric may be printed by screen printing or heat transfer printing (col. 12, lines 10-14).

Thus, Laird teaches the presently claimed invention with the exception that the printed pattern correlates to the embossed pattern. However, Stark teaches patterned or textured pile fabrics having areas of low and high pile and a design pattern printed out of register with the patterned pile (col. 1, lines 51-57 and col. 2, lines 7-17). Said pile fabric may be a flocked fabric (col. 2, lines 10-14). The Stark invention produces an aesthetically pleasing product having “an enriched appearance that enhances the surface of the products formed therefrom” (col. 1, lines 50-57 and col. 2, lines 45-51). Note Figure 1 shows an illustration of a flower printed on the textured pile fabric. Thus, it would have been obvious to one skilled in the art to modify the Laird process by superposing the print pattern out of registry with the embossed pattern to produce an aesthetically pleasing, visually enhanced flocked fabric.

Although, Laird and Stark do not explicitly teach the fabric is a camouflage fabric, it is argued said limitation is descriptive of intended use. Since the prior art fabric has all of the claimed structural features, including the particular elongated shapes, it is argued the prior art fabric is capable of use as a camouflage fabric. Therefore, claims 5-12, 18-27, 47, 48, and 53-57 are rejected as being obvious over the cited prior art.

Conclusion

7. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on October 14, 2004, prompted the new ground(s) of rejection

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presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

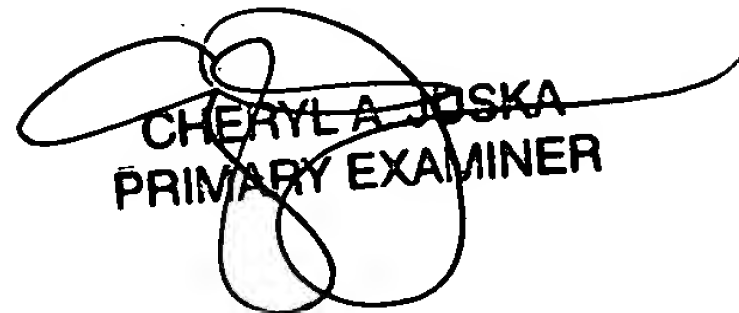
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JOSKA
PRIMARY EXAMINER

cj
May 6, 2005